

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KRISTIN JOURNIGAN individually
and on behalf of all other similarly
situated individuals,

Plaintiffs,

Case No.: 1:14-cv-00913-SCJ

v.

WBY, INC. d/b/a THE FOLLIES,

Defendant.

NOTICE OF SETTLEMENT

Plaintiff Kristin Journigan on behalf of herself and of the collective (“Plaintiffs”), by through their attorneys, respectfully provide the Court with this notice of settlement:

1. Plaintiffs filed this collective action pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq.* on March 31, 2014, (ECF No. 1).
2. Defendant WBY, Inc. (“Defendant”) answered December 15, 2015, (ECF No. 92).

3. In the time period between the filing of the complaint and the answer, Defendant brought two motions to compel arbitration, (ECF Nos. 10, 19), Defendant moved to strike declarations, (ECF No. 36), Plaintiffs moved for conditional certification, (ECF No. 27), the parties then stipulated to conditional certification, which the Court granted, (ECF No. 41–42), the Court stayed the case so that the parties could mediate their dispute, (ECF No. 43), and the Court denied Defendant's motions to compel arbitration, (ECF No. 89).¹

4. On February 5, 2016, Defendant filed a voluntary petition for Chapter 11 Bankruptcy in the U.S. Bankruptcy Court for the Northern District of Georgia styled, *In re: WBY, Inc.*, Case Number 16-52291-jrs, (Bkcy ECF No. 1).

5. On May 11, 2016, the United States Bankruptcy Court granted Plaintiffs' motion for relief from the automatic stay, in *In re WBY, Inc.*, Bkcy No. 16-52291-jrs (N.D. Ga.) (Bkcy ECF No. 67), and ordered that the case proceed before this Court for the limited purpose of determining (i) whether the Plaintiffs qualify as Defendant's employees and if so, (ii) whether Defendant violated the FLSA by failing to compensate Plaintiffs with wages at the minimum rate. The

¹ The Court granted the motion as to Plaintiff Tiara Payne, but Plaintiffs did not oppose as to Ms. Payne who filed an arbitration demand soon after Defendant brought their motion to compel, producing her signed arbitration agreement.

Bankruptcy Court maintained jurisdiction, however, over quantifying damages and determining willfulness, (*see also* Bkcy ECF Nos. 82, 115.)

6. The parties to this action settled their disputes by settlement agreement dated August 22, 2016. Plaintiffs' counsel sent notice of the settlement to all sixty-nine Plaintiffs, and sixty-seven Plaintiffs consented to the settlement, pending Bankruptcy Court approval.

7. The Bankruptcy Court approved the settlement by Order dated October 7, 2016, finding the settlement to be "fair and reasonable and in the best interest of the Debtor's estate, creditors and all parties in interest." A copy of that order is attached hereto as **Exhibit A**.

8. Defendant submitted a Chapter 11 reorganization plan to the Bankruptcy Court on October 24, 2016, (Bkcy ECF No. 141), (as amended on December 20, 2016, Bkcy ECF No. 426), and the sixty-seven accepting Plaintiffs voted to confirm the plan. The Court entered an order confirming the Debtor's Chapter 11 plan of reorganization on December 22, 2016, (Bkcy ECF No. 428).

THUS PLAINTIFFS HEREBY NOTIFY THIS COURT,

Pursuant to the agreement and plan, Plaintiffs anticipate receiving their first payment in February 2017.

Pursuant to the settlement agreement, Plaintiffs' counsel will request from

this Court dismissal of the sixty-seven accepting Plaintiffs' claims with prejudice on or before February 5, 2017.

Plaintiffs will file a motion for substitution of counsel and/or a motion to withdrawal as counsel for the three rejecting Plaintiffs.

Pursuant to the settlement agreement, Defendant will soon seek dismissal of the three rejecting Plaintiffs without prejudice.

Defendant consents to the filing of this Notice.

Respectfully submitted,

Dated: February 8, 2017

NICHOLS KASTER, PLLP

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CERTIFICATE OF TYPEFACE COMPLIANCE

Pursuant to Local Rule 7.1(D), counsel certifies that the pleading has been prepared in Times New Roman, 14-point type, which is one of the font and point selections approved by the Court in Local Rule 5.1(B).

Dated: February 8, 2017

/s/ Rebekah L. Bailey

Rebekah L. Bailey

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
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CERTIFICATE OF SERVICE

***Journigan, et al. v. WBY, Inc. d/b/a The Follies,*
Court File No.: 1:14-cv-00913-SCJ**

I hereby certify that on February 8, 2017, I electronically filed the foregoing

NOTICE OF SETTLEMENT

with the Clerk of the Court using the CM/ECF system, which will automatically email notification to the attorneys of record.

Dated: February 8, 2017

/s/ Rebekah L. Bailey
Rebekah L. Bailey